

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF CTA ACOUSTICS, INC.	)	
TO RETAIN KENTUCKY UTILITIES	)	CASE NO. 2003-00226
COMPANY AS POWER SUPPLIER AND	)	
FOR EXPEDITED TREATMENT	)	

O R D E R

On June 10, 2003, CTA Acoustics, Inc. ("CTA Acoustics") filed a petition, pursuant to KRS 278.016 - 278.018, requesting the Commission to modify the electric territorial boundary within the Southeast Kentucky Regional Business Park ("Business Park") in Knox County, Kentucky. The Business Park is located within adjacent territories certified to Cumberland Valley Electric, Inc. ("Cumberland Valley") and Kentucky Utilities Company ("KU"). CTA Acoustics requests that the entire Business Park be considered a new electric-consuming facility that is located in two adjacent certified territories and that, based on the criteria set forth in KRS 278.017(3), KU be authorized to serve the entire Business Park.

Both Cumberland Valley and KU filed responses to the petition, an informal conference was held at the Commission's offices, and additional pleadings were filed by all parties. Based on the unique circumstances presented in this case, the Commission issued an Interim Order on July 21, 2003 granting KU the temporary right, not to exceed 6 months, to provide electric service to CTA Acoustics. The Interim Order also established a procedural schedule that provided for discovery, the filing of prepared

testimony, and an evidentiary hearing. The evidentiary hearing commenced on January 21, 2004, and during the second day of the hearing the parties announced that they had reached a settlement on all issues. The major terms of that settlement were reduced to writing and read into the record on January 22, 2004. The parties further agreed to submit a formal settlement agreement and a supporting motion, both of which were filed on February 3, 2004.

The Settlement Agreement, attached hereto and incorporated herein by reference, provides that the certified territorial boundary will be modified within the Business Park so that Cumberland Valley's territory includes all of Lot Nos. 1, 2, 3, 4, 5, 6, 7, and 9, and KU's territory includes all of Lot Nos. 1-A, 8, 10, 11, 12, and 13.<sup>1</sup> This boundary change will allow KU to provide electric service to CTA Acoustics, which is located on Lot No. 1-A, and allow Cumberland Valley to serve the existing speculative building, which is located on Lot No. 5. In addition, there will be a boundary change for approximately 75 acres bordered generally by Watch Road and Lynn Camp Church Road to include that land within the certified territory of Cumberland Valley, except that KU will retain within its territory any existing customers on that land.<sup>2</sup> The two utilities also acknowledge that each is serving a limited number of customers in the other's territory, and they have agreed to work together to revise the certified territorial boundary maps to reflect these customers as well as the other changes agreed to as part of the Settlement Agreement.

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<sup>1</sup> A map depicting the lots within the Business Park is attached as an exhibit to the testimony of Richard Harp, filed on behalf of CTA Acoustics on August 5, 2003.

<sup>2</sup> A map showing the location of the 75 acres is attached to the Settlement Agreement.

Cumberland Valley and KU have also agreed that neither utility, after investigation, will intentionally provide electric service to a customer located entirely within the exclusive service territory of the other utility without the prior permission of both utilities or approval by the Commission. In an effort to minimize disputes between retail electric suppliers, the Commission takes this opportunity to remind all retail electric suppliers that they are prohibited from serving customers located in the certified territory of another retail electric supplier, except as otherwise provided in KRS 278.016 - 278.018.

In determining whether the terms of the Settlement Agreement are in the public interest and are reasonable, the Commission has taken into consideration the comprehensive nature of the Agreement and the provision of KRS 278.018(6), which authorizes retail electric suppliers to allocate territories and consumers between themselves, subject to Commission approval. Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that the Settlement Agreement is in accordance with the law and does not violate any regulatory principle. The Settlement Agreement is a product of arm's-length negotiations among capable, knowledgeable parties, is in the public interest, and results in a reasonable resolution of all issues in this case. The boundary changes agreed to by the parties herein will promote the purposes of KRS 278.016 and will result in adequate and reasonable electric service being provided to the affected areas and consumers.

The Commission further finds that the Settlement Agreement is based upon the specific facts of this case and has no precedential value. Any future requests for an industrial park to be considered a new electric-consuming facility under KRS 278.018(1)

will be decided by applying the facts presented to the provisions of the Territorial Boundary Act (KRS 278.016 - 278.018) and the previous rulings of the Commission in such cases.

IT IS THEREFORE ORDERED that:

1. The Settlement Agreement is adopted and approved in its entirety as a complete resolution of all issues in this case.
2. The July 21, 2003 Interim Order is withdrawn and shall have no precedential value in any future proceeding.
3. Within 60 days from the date of this Order, Cumberland Valley and KU shall file revised territorial boundary maps reflecting the changes approved herein.
4. The pending petition of CTA Acoustics is dismissed as settled and this case is closed.

Done at Frankfort, Kentucky, this 19<sup>th</sup> day of February, 2004.

By the Commission

ATTEST:

  
Executive Director

## APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2003-00226 DATED February 19, 2004

## SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 2<sup>nd</sup> day of February, 2004, by and between CTA Acoustics, Inc. ("CTA"), Cumberland Valley Electric, Inc. ("CVE") and Kentucky Utilities Company ("KU").

### **WITNESSETH:**

**WHEREAS**, on or about June 10, 2003, CTA filed with the Kentucky Public Service Commission ("Commission") its Petition to Retain Kentucky Utilities Company as Power Supplier, which Petition sought to have the Southeast Kentucky Regional Business Park ("Business Park") in or near Corbin, Kentucky to be declared a single electric-consuming facility ("ECF") and to have KU awarded the right to serve the entire Business Park as an ECF;

**WHEREAS**, CVE and KU were made parties to that action by Order of the Commission on June 18, 2003 in Case No. 2003-00226;

**WHEREAS**, a formal hearing in Case No. 2003-00226 was scheduled to begin on January 22, 2004, and both before and after the hearing on that day the parties, with the encouragement of the Commission and the involvement of Commission Staff counsel, engaged in settlement discussions;

**WHEREAS**, those negotiations involved the issues presented in Case No. 2003-00226 as well as the issues presented in the Petition and Complaint of Cumberland Valley Electric Concerning Service By Kentucky Utilities, Inc. [sic] In Contravention of KRS 278.016-.018 and KRS 278.020, filed and served on or about January 8, 2004, Case No. 2004-00030;

**WHEREAS**, CVE participated in those settlement negotiations with the advice and input of East Kentucky Power Cooperative, Inc. ("EKPC") and a number of other power cooperatives

and their counsel from across the Commonwealth who had moved for, but been denied, full intervention in Case No. 2003-00226;

**WHEREAS**, a unanimous settlement of all issues in the referenced proceedings was reached on January 22, 2003; and

**WHEREAS**, the parties desire to settle all issues pending before the Commission in Case No. 2003-00226 and in the Petition and Complaint of Cumberland Valley Electric Concerning Service By Kentucky Utilities, Inc. [sic] In Contravention of KRS 278.016-.018 and KRS 278.020, filed and served on or about January 8, 2004, Case No. 2004-00030.

**NOW, THEREFORE**, for and in consideration of the premises and conditions set forth herein, the parties hereby agree as follows:

**Article 1      Amendment of Territorial Boundaries**

- 1.01    CVE will serve the territory presently designated as lots 1, 2, 3, 4, 5, 6, 7 and 9 in the Business Park.
- 1.02    KU will serve the territory presently designated as lots 1-A, 8, 10, 11, 12 and 13 in the Business Park.
- 1.03    KU shall be the authorized retail electric supplier to serve CTA in the territory presently designated as Lot 1-A in the Business Park, and CVE shall be the authorized retail electric supplier to serve the speculative building in the territory presently designated as Lot 5 in the Business Park.
- 1.04    CVE will serve the territory depicted as the approximately 75 acres bordered generally by Watch Road and Lynn Camp Church Road as

shown on the attached map, with the exception that KU will retain within its territory any existing customers on that land.

1.05 KU and CVE acknowledge that there are certain customers – a number of residences and the water tank located outside of the Business Park – which are located in the present certified territory of one utility but are currently known to be served by the other utility.

1.06 KU and CVE will work together to prepare amendments to the certified territory maps for the lots, land and customers set forth above.

**Article 2      Reimbursement of Costs**

2.01 CTA will reimburse CVE and EKPC \$32,500.00 for actual costs incurred in extending a distribution line for temporary service to a contractor at the construction site of its facility and for initial planning and preparation to serve the CTA facility.

**Article 3      Effect on Pending Actions**

3.01 The Parties will jointly move the Commission to dismiss CTA's Petition in Case No. 2003-00226 as settled.

3.02 CVE's Petition and Complaint Concerning Service By Kentucky Utilities, Inc. [sic] In Contravention of KRS 278.016-.018 and KRS 278.020, Case No. 2004-00030, will be withdrawn as settled.

3.03 Upon formal Commission adoption and acceptance of the tendered Agreement and Order as a full resolution of all issues arising from the



proceedings described in Articles 3.01 and 3.02 above, no party will file a petition for rehearing under KRS 278.400 or an appeal under KRS 278.410.

**Article 4      Order of the Commission**

- 4.01      The parties are, concurrently with the tender of this Settlement Agreement, tendering to the Commission the Order attached hereto. The parties agree to the language contained in that tendered Order, which language is incorporated herein by reference.

**Article 5      Additional Provisions**

- 5.1      This Settlement Agreement shall in no way be deemed to divest the Commission of any jurisdiction under, or to supersede in any way, Chapter 278 of the Kentucky Revised Statutes.
- 5.2      This Settlement Agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, successors and assigns.
- 5.3      The signatories hereto warrant that they have informed, advised, and consulted with the respective parties hereto in regard to the contents and significance of this agreement and based upon the foregoing are authorized to execute this Settlement Agreement on behalf of the parties hereto.

5.4 This Settlement Agreement is a product of negotiation among all the parties, and no provision of this Settlement Agreement shall be strictly construed in favor of or against any party.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their signatures.

**CTA Acoustics, Inc.**

BY: C. Kent Hatfield  
C. Kent Hatfield, Counsel

**Cumberland Valley Electric, Inc.**

BY: Anthony G. Martin  
Anthony G. Martin, Counsel

**Kentucky Utilities Company**

BY: J. Gregory Cornett  
J. Gregory Cornett, Counsel

